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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,704	02/14/2005	Rowena V. Cube	MS022YP	1366
<div>210 7590 11/26/2007</div> <div>MERCK AND CO., INC</div> <div>P O BOX 2000</div> <div>RAHWAY, NJ 07065-0907</div>				
EXAMINER				
SHIAO, REI TSANG				
ART UNIT		PAPER NUMBER		
1626				
MAIL DATE		DELIVERY MODE		
11/26/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/524,704

Applicant(s)

CUBE ET AL.

Examiner

Rei-tsang Shiao, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This application claims benefit of the provisional application: 60/405,908 with a filing date 08/26/2002.
2. Amendment including cancellation of claims 1-22 and addition of claims 23-31 in the amendment filed on September 25, 2007 is acknowledged. Claims 23-31 are pending in the application. No new matter is found. Since the newly added claims 23-31 are commensurate with the scope of the invention, claims 23-31 are prosecuted in the case.

Response to Election/Restriction

3. Claims 23-31 are pending in the application. The scope of the invention of the elected subject matter is as follows.

Claims 23-31 are drawn to compounds/compositions of formula (I).

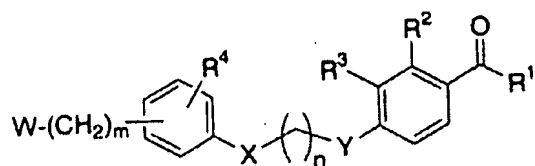
The requirement is still deemed proper and therefore is made FINAL.

Responses to Amendment/Arguments

4. Since claims 15-17 have been cancelled, the rejection of claims 15-17 under 35 U.S.C. 112, first paragraph has been obviated herein.
5. Since claims 1-17 and 21 have been cancelled, the rejection of claims 1-17 and 21 under 35 U.S.C. 102(b) or 103(a) has been obviated herein.

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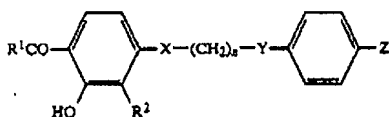
6. Applicants claim compounds of formula (I), i.e.,



of newly added claims 23-31, wherein the

variable W represents tetrazolyl, the variable X or Y is O, the variable m is 0, the variable R¹, R² or R³ independently represents hydrogen, hydroxyl or alkyl, and the variable n is 4.

Goldworthy et al. US 4,595,540 disclose compounds/composition of the formula, i.e.,



, wherein the variable Z is 5-(1H-tetrazole), X or Y is O or S; the variable n is 2-6, R¹, R² independently represents hydrogen or alkyl, see columns 1-2, see column 1.

The difference between the instant claims and Goldworthy et al. is that the instant variable X or Y is O represents O, while Goldworthy et al. represents O or S at the same position. Goldworthy et al. compounds/compositions overlap with the instant invention.

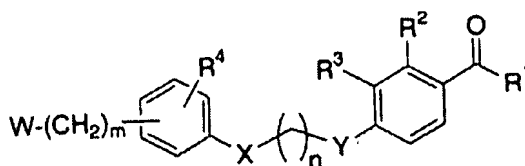
One having ordinary skill in the art would find the instant claims 23-31 prima facie obvious **because** one would be motivated to employ the compounds/compositions of Goldworthy et al. to obtain the instant compounds/compositions of formula (I), wherein the variable W represents tetrazolyl, the variable X or Y represents

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hydrogen, halogen, alkyl, hydroxyl, phenyl, cycloalkyl or -Oalkyl. It is well-established that consideration of a reference (i.e., Goldworthy et al. US 4,595,540) is not limited to the preferred embodiments or working examples, but extends to the entire disclosure for what it fairly teaches, when viewed in light of the admitted knowledge in the art, to person of ordinary skill in the art, see *in re Boe*, 355 F.2d 961, 148 USPQ 507, 510 (CCPA 1966); *In re Lamberti*, 545 F.2d 747, 750, 192 USPQ 279, 280 (CCPA 1976).

The motivation to obtain the claimed compounds/compositions derives from known Goldworthy et al. compounds/compositions would possess similar activities (i.e., agents for pharmaceutical compositions) to that which is claimed in the reference.

7. Since claims 1-17 and 21 have been cancelled, the rejection of claims 1-17 and 21 under obviousness- type double patenting has been obviated herein. Applicants



claim compounds of formula (I), i.e.,

of newly

added claims 23-31, wherein the variable W represents tetrazolyl, the variable X or Y is O, the variable m is 0, the variable R¹, R² or R³ independently represents hydrogen, hydroxyl or alkyl, and the variable n is 4. The instant compounds of formula (I) of claims 23-31 do not render obviousness over Doeber et al. US 6,020,382 or over Belanger et al. US 4,820,867.

8. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

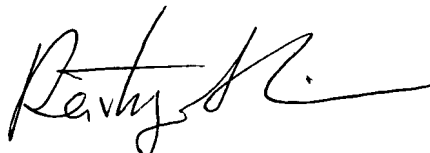
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rei-tsang Shiao whose telephone number is (571) 272-0707. The examiner can normally be reached on 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on (571) 272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Rei-tsang Shiao', with a stylized flourish at the end.

Rei-tsang Shiao, Ph.D.
Patent Examiner
Art Unit 1626

November 20, 2007